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WALTER ANDY ANDERSEN, TRUSTEE WALTER A ANDERSEN TRUST;
ROLARO CORPORATION

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CHRIS LANGER,
Plaintiff,

v.

BYRDIE A. ANDERSEN, an
individual and representative
capacity as trustee; WALTER A.
ANDERSEN, in individual and
representative capacity as trustee;
ROLARO CORPORATION, a
California Corporation; and DOES
1-10,

Defendants.

Case No. 15-cv-642-L-NLS

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANTS WALTER ANDERSEN,
TRUSTEE WALTER A ANDERSEN
TRUST AND ROLARO
CORPORATION'S MOTION TO
ENFORCE THE SETTLEMENT**

***NO ORAL ARGUMENT UNLESS
ORDERED BY THE COURT***

**Hearing: November 30, 2015
Time: 10:00 a.m.
Magistrate: Hon. Nita L. Stormes
Ctrm: Room 1210**

**Judge: Hon. M. James Lorenz
Courtroom: 5-B (5th Floor-Schwartz)
Suite 5145**

I.

SUMMARY OF FACTS

In or about April 28, 2015, the parties reached a settlement after engaging in settlement discussions via email in response to Plaintiff's initial settlement demand of a monetary sum plus remediation. (*See*, Declaration of Susana M. Mahady in

1 Support of Motion to Enforce Settlement and Exhibits attached thereto, which are
 2 incorporated herein by reference). After the parties confirmed their respective
 3 clients' settlement authority and reached an agreement, the Plaintiff sought to
 4 include a confidentiality provision in the written settlement agreement. Defendants
 5 objected to the inclusion of a confidentiality provision because (1) it was not a
 6 negotiated term when the parties discussed, and ultimately reached a settlement,
 7 and hence lacked consideration; (2) Plaintiff's safety concerns to support his
 8 demand for confidentiality lack basis and do not outweigh the risk of exposure to
 9 liability for the Defendants, and (3) confidentiality thwarts the legal system from
 10 protecting the public from wrongful conduct when alleged violations or
 11 purportedly wrongful conduct is hidden by confidentiality.

12 On August 3, 2015, and following a Settlement Disposition Conference that
 13 was held on July 23, 2015, the court ordered the parties to lodge letter briefs setting
 14 forth their respective positions. Defendants timely lodged their letter brief.
 15 Nothing was submitted on behalf of the Plaintiff.

16 Defendants now respectfully request that this Court enforce the settlement
 17 reached by the parties and enter a judgment of dismissal of this action.

18 II.

19 **THE COURT IS AUTHORIZED TO ENFORCE THE SETTLEMENT**

20 Courts have inherent power to enforce settlements between the parties in
 21 pending cases. *Dacanay v. Mendoza*, 573 F.2d 1075, 1078 (9th Cir. 1978); See
 22 *Millner v. Norfolk & W. Ry. Co.*, 643 F.2d 1005, 1009 (4th Cir.1981) [District
 23 courts have inherent authority, deriving from their equity power, to enforce
 24 settlement agreements]. The fact that the agreement is not in writing does not
 25 render it unenforceable. *Alexander v. Industries of the Blind, Inc.*, 901 F.2d 40, 41
 26 (4th Cir.1990).

27 The authority of a trial court to enter a judgment enforcing a settlement
 28 agreement has as its foundation the policy favoring the amicable adjustment of

1 disputes and the concomitant avoidance of costly and time consuming litigation.
 2 (citations omitted). *Dacanay v. Mendoza, supra* at 1078. The court has power to
 3 adjudicate disputed issues of fact relating to the settlement—e.g., whether there
 4 was a “meeting of the minds,” whether the agreement was authorized, whether
 5 grounds for rescission exist. *Chavez v. New Mexico* 397 F3d 826, 830-831 (10th
 6 Cir. 2005).

7 The parties, through counsel, negotiated a settlement over several weeks
 8 following plaintiff’s settlement demand for a monetary amount plus remediation of
 9 the alleged violations. (See, Declaration of Susana M. Mahady, Exhibit “A”). An
 10 agreement was reached after each attorney confirmed their authority to settle on
 11 behalf of their respective clients for the proposed monetary amount. After the
 12 parties agreed to the settlement amount and after notice that remediation was
 13 completed, Plaintiff asserted for the first time that confidentiality was an additional
 14 term to be included in the proposed settlement agreement. (See, Declaration of
 15 Susana M. Mahady, Exhibit “B”). Defendants objected to confidentiality as it was
 16 never mentioned during any of the prior settlement discussions and because it
 17 constituted a material term not negotiated as part of the settlement.

18 Courts have rejected efforts by counsel to require a party to accept a
 19 confidentiality clause that was not discussed in an oral agreement when there was
 20 no evidence that the parties contemplated inclusion of confidentiality clause during
 21 negotiations. *Platcher v. Health Professionals, Ltd.* 549 F.Supp.2d 1040 (2008);
 22 *See also, Dillard v. Starcon Intern., Inc.*, 483 F.3d 502 (7th Cir.2007) [court
 23 declined to enforce a confidentiality provision when the confidentiality provision
 24 was never discussed during negotiations in front of the magistrate judge].

25 This matter has since sat idle as no further action has been taken by the
 26 Plaintiff, including participation in the court’s efforts to resolve this dispute.
 27 Assuming Plaintiff takes the position that there was no agreement because it was
 28 never memorialized in writing courts have enforced even oral agreements if the

1 plaintiff agreed to the terms of the settlement or if the plaintiff's attorney was
 2 authorized to settle the dispute and dismiss the action, even if the plaintiff later
 3 changes his mind after the oral settlement is reached between the parties. *See*,
 4 *Harrop v. Western Airlines, Inc.*, 550 F.2d 1143, 1144–1145 (9th Cir. 1977) [An
 5 oral settlement agreement may be enforced]; *See also*, *Butler v. Merrill Lynch*,
 6 *Pierce, Fenner & Smith*, 528 F.2d 1390, 1391 (9th Cir. 1975).

7 **III.**

8 **THE SETTLEMENT SHOULD BE ENFORCED IN ACCORDANCE WITH** 9 **ITS PLAIN MEANING**

10 The principles guiding this Court's enforcing the Settlement are well-
 11 established. A settlement is essentially a contract and is therefore generally
 12 construed in accordance with the rules apposite to contracts. *Rufo v. Inmates of*
 13 *Suffolk County Jail*, 502 U.S. 367, 378; 112 S. Ct. 748; *See also*, *Jeff D. v. Andrus*,
 14 899 F.2d 753, 759 (9th Cir. 1989).

15 The Court should construe the agreement "according to the plain meaning of
 16 its terms." *Nodine v. Shiley Inc.*, 240 F.3d 1149, 1154 (9th Cir. 2001); *Vaillette v.*
 17 *Fireman's Fund Ins. Co.*, 18 Cal.App.4th 680, 686 (1993) ("words of the document
 18 are to be given their plain meaning and understood in their common sense; the
 19 parties' expressed objective intent, not their unexpressed subjective intent,
 20 governs." (citations omitted)).

21 Plaintiff had many opportunities to propose confidentiality as a material
 22 term to the agreement during the settlement discussions, however, it was never
 23 expressed until after the agreement was reached. The expressed objective intent of
 24 the agreement between the parties is set forth in the discussions contained in the
 25 attached Exhibit A and it is that agreement which should be enforced.

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IV.

CONCLUSION

In view of the foregoing, and the agreement attached to the Declaration of Susana M. Mahady showing a valid and binding settlement agreement between the parties hereto, Defendants respectfully requests that the Court issue an order enforcing the settlement between the parties as well as an order requiring Plaintiff to execute the proposed written release and settlement agreement without any confidentiality requirements.

Respectfully submitted,

LAW OFFICES OF SUSANA M. MAHADY

Dated: October 19, 2015

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